

FINDING OF EMERGENCY

The Rigid Plastic Packaging Container (RPPC) Act of 1991 (SB 235, Hart, Chapter 769) was enacted for the purpose of diverting rigid plastic packaging containers, a significant component of solid waste generated in the state, from landfill disposal by developing critical, stable in-state markets for recycled plastic resin. The California Integrated Waste Management Board finds that an emergency exists, and that the subject regulations are necessary to protect health and safety and the general welfare, including all of the state's local jurisdictions and thousands of businesses that comprise California's markets for recycled plastic. These regulations are necessary to complete in-progress and imminent enforcement actions under the RPPC Law.

Specific Facts Showing the Need for Immediate Action

The RPPC Law requires every RPPC offered for sale in California to meet, on average, one of several compliance options. These options were designed to encourage reuse and recycling of RPPCs, the use of more postconsumer resin in RPPCs, and a reduction in the amount of virgin plastic resin employed in RPPCs. RPPCs must meet one of three design criteria or be recycled at one of three specified rates. The Board is required annually to calculate two of these rates – the statewide RPPC all-container rate (an aggregate recycling rate for all RPPCs) and the statewide recycling rate for polyethylene terephthalate (PETE) RPPCs. If either of these recycling rates falls below the statutory minimum, the Board may require manufacturers to certify that they were in compliance with one of the other options that year.

The all-container and PETE recycling rates fell below the statutory minimums for the 1997, 1998 and 1999 compliance years. Calculation of these rates was delayed because of significant stakeholder involvement. As a result, the Board ordered a combined compliance certification for the 1997, 1998 and 1999 compliance years, and directed staff to certify approximately 1,000 companies.

Public Resources Code Section 42322 sets out the statutory authority for assessing fines and penalties under the RPPC Law. Administrative civil penalties may be assessed for violations of the law only after a hearing is held before an Administrative Law Judge. Section 42322 allows assessment of \$50,000 per violation, with a maximum annual assessment for a company of \$100,000. The Board adopted general penalty criteria, which was used for one RPPC hearing held in the past. However, neither the statute nor the existing general penalty criteria address a critical aspect of assessing these penalties, i.e., what constitutes a "violation." The proposed regulation would establish five clearly defined violations with the associated range of penalties. This more specific penalty structure is crucial to assist the Administrative Law Judge and the Board in assuring that accused violators have fair and equal treatment when administrative civil penalties are imposed.

These regulations need to be adopted on an emergency basis because several hearings will be immediately necessary in order to complete the 1997 through 1999, 2000 and 2001 compliance year certifications in a timely manner.

For the 1997 through 1999 compliance year certification, 950 companies were required to submit certifications. Several of these companies were unable to demonstrate compliance with the RPPC Law for the applicable certification period. One hundred and forty-four (144) of these companies were offered and entered into Compliance Agreements with the Board. Under a Compliance Agreement, a company is allowed one year to come into compliance and then demonstrate compliance. Many of the Compliance Agreements the Board entered into with regulated companies are in the process of being completed, and the companies least likely to have met the terms and conditions of the Compliance Agreements will be brought forward to the Board in April and May 2003. In addition, fifty-one (51) companies requested relief from enforcement because of the small size of the company or volume of plastic resin sold into California, thirty-nine (39) of which were denied such relief in Fall 2002.

It is anticipated there will be numerous hearings and settlement negotiations within these two categories of companies where the company is unable or unwilling to achieve compliance, and the penalty structure is needed prior to negotiating or imposing any penalties. For the 2000 compliance year certifications, the Board will be

considering enforcement action in May 2003, and it is anticipated there will be several hearings for companies that failed to respond to the request for certification or were unable/unwilling to achieve compliance.

The 2001 certification is anticipated to take place in spring or summer of 2003, and the proposed penalty structure would establish clear expectations upon regulated companies. In particular, based on experience with enforcement of other Board programs, the threat of penalties for lateness can serve as a deterrent to late submittals. Thus the proposed regulations would enable the Board to complete the 2001 certification process in a timely manner.

To ensure that there are no further delays in negotiating settlements and completing enforcement for the 1997 through 2000 compliance year certifications, and to clarify expectations for the 2001 certification, it is critical that the penalty structure be in place no later than May 2003.

Authority and Reference

Authority: Section 40502 and 42325, Public Resources Code

Reference: Section 42310, 42320, and 42322, Public Resources Code

Mandate on Local Agencies and School Districts

The proposed regulation does not impose a mandate on local agencies or school districts.

Cost Impact on Public Agencies, School Districts, and State and Federal Funds

There are no fiscal impacts on any public agency, school district, or to state and federal funds.

Effect on Housing Costs

There are no fiscal impacts on housing costs.

Effect on Business and Small Business

Staff has determined that the regulatory proposal will have no significant adverse economic impact on business or small business, will have no impact on private persons or enterprises, will not have an adverse impact on California businesses, including the ability to compete with out-of-state businesses, and will not have an impact on the creation or elimination of jobs within the state.

Cost Impact on Private Persons or Enterprises

No impact on private persons or enterprises.

Effect on Competition with Out-Of-State Business

The regulatory proposal will have no adverse effect including the ability to compete with out-of-state businesses.

Effect on Creation or Elimination of Jobs, Existing or New Business in the State of California

Will not have an impact on the creation or elimination of jobs within the state.

Consideration of Alternatives

The CIWMB must determine that no reasonable alternative exists that would be more effective or would be less burdensome to affected parties in carrying out the purpose for which the action is proposed than the proposed action.